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MAR 01 2011

OFFICE OF PETITIONS

In re Patent of Hersperger et al.: DECISION ON
Patent No. 7,858,781 : REQUEST FOR
Issued: December 28, 2010 : RECONSIDERATION OF
Application No. 10/597,753 : PATENT TERM ADJUSTMENT
Filed: September 20, 2006 :
Docket No. 33647-US-PCT :
:

This is a decision on the petition under 37 CFR 1.705(d), filed January 10, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two (1002) days.

The petition is **DISMISSED**.

Patentees argue the Office incorrectly calculated the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay"). Patentees argue the B Delay calculation should begin three years after the September 20, 2006 date of receipt of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements. Patentees argue the B Delay is 464 days.

The Office does not concur.

As stated in MPEP 1893.03(b), in pertinent part, "For most legal purposes, the filing date is the PCT international filing date. Exceptions to this general rule include the following:

(C) Patent term adjustment under 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) when the USPTO has failed to issue a patent within three years of the "actual filing date" of an application. In this situation, the "actual filing date" is the date the national stage commenced under 35 U.S.C. 371(b) or (f).

37 CFR 1.702(b) indicates that a patent is entitled to patent term adjustment if, subject to a number of limitations, the Office fails to issue a patent within three years of the actual filing date of the application (35 U.S.C. 154(b)(1)(B)). In the case of an international application, the phrase "actual filing date of the application in the United States" means the date the national stage commenced under 35 U.S.C. 371(b) or (f). See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term, 65 FR 56366, 56382-84, (Sept. 18, 2000), 1239 Off. Gaz. Pat. Office 14, 28-30 (Oct. 3, 2000). See MPEP § 2730.

The priority date of this application is February 11, 2004. The national stage commenced thirty months later, on August 11, 2006. Thus, "B" delay is 504 days, counting the number of days beginning on August 12, 2009 and ending on December 28, 2010, the date of issuance. See 1.703(b).

In view of the above, the correct patent term adjustment remains 1042 days, which is the sum of 568 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 504 of B Delay, and reduced by 30 days for Applicant delay.

The \$200.00 fee set forth in 37 CFR 1.18(e) for filing a petition under 37 CFR 1.705(d) will be charged to deposit account no. 50-4409. No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.



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